

CHAPTER 4. GENERAL DIRECTION, GUIDANCE, AND PROCEDURES

SECTION 2. COMPLIANCE AND ENFORCEMENT

129. GENERAL. Federal Aviation Administration (FAA) Order 2150.3A, "Compliance and Enforcement Program," contains the objectives, policies, responsibilities, guidelines, procedures, and legal aspects of the entire FAA compliance and enforcement program. This section contains information and guidance to be used by inspectors concerning specific areas of the compliance and enforcement program pertaining to Federal Aviation Regulations (FAR) Part 121 and 135 operators. These subject areas include the following:

- Air carrier voluntary disclosure of violations
- Deviations resulting from emergencies
- Violations involving multiple crewmembers
- System-wide violations
- Compliance with smoking regulations for in-flight operators

NOTE: Section 44702(b) of Title 49, United States Code (U.S.C.) (formerly § 601(b) of the Federal Aviation Act (FA Act) of 1958) requires that air carriers perform their services with the highest possible degree of safety in the public interest.

131. AIR CARRIER VOLUNTARY DISCLOSURE OF VIOLATIONS. Advisory Circular (AC) 120-56, "Air Carrier Voluntary Disclosure Reporting Procedures," contains detailed information and guidance that may be used by FAR Part 121 and 135 operators when electing to voluntarily disclose violations to the FAA. The sharing of violation information, a cooperative attitude between operators and the FAA, and an advisory approach to solving problems enhance and promote aviation safety. The inspector should, therefore, inform an operator that if the operator chooses to comply with the guidance in this section, the operator will be issued a letter of correction in lieu of civil penalty action.

A. Eligibility of Operator. When an inspector evaluates the eligibility of an operator for using voluntary disclosure procedures, the inspector should

ensure that the operator meets the following five conditions:

- (1) The operator immediately notified the FAA of the apparent violation after detecting it and before the agency learned of it.
- (2) The apparent violation must have been inadvertent.
- (3) The apparent violation does not indicate a lack of or reasonable question of basic qualification of the operator.
- (4) Immediate action must have been taken, or begun to have been taken, upon discovery to terminate the conduct that resulted in the apparent violation.
- (5) The operator must develop and implement a comprehensive fix satisfactory to the FAA.

NOTE: Ordinarily, the FAA will not forego legal enforcement action if the operator informs the FAA of the apparent violation during routine FAA investigations/inspections (that time from which the inspection team physically arrives on site until the time the team departs at the completion of the inspection), or in association with accidents and incidents.

B. Procedures. Inspectors should use the following procedures when applying the voluntary disclosure policy:

(1) *Initial Notification by the Operator.* The operator shall initially notify the appropriate principal inspector immediately after discovering the violation. This notification may be verbal, in written hard copy, or in written electronic copy. It is more important for the initial notification to be immediate than complete. The operator should not delay this notification just to gather information. Time permitting, this initial notification should cover, with as much detail as is available, at least the following items:

- A brief description of the apparent violation (to include an estimate of the duration of time that the apparent violation remained

undetected as well as how and when it was discovered)

- Verification by the operator that additional similar violations have not occurred after the initial violation was identified
- A brief description of the immediate action taken after the apparent violation was identified (to include the action taken to terminate the conduct that resulted in the apparent violation and the person responsible for taking that action)
- Verification from the operator that an internal evaluation is underway to determine if the apparent violation points to any system-wide problems
- A description of the corrective steps necessary to prevent the apparent violation from recurring
- Identification of the person responsible for preparing the comprehensive fix
- Acknowledgement from the operator that a detailed written report will be provided to the principal inspector within 10 calendar days after the discovery of the apparent violation

(2) *FAA Response to Operator Notification.* The principal inspector shall respond to the operator with a written acknowledgement of the initial notification. This response serves in lieu of a letter of investigation, provided the written report is completed according to the procedures set forth in AC 120-56. These procedures are summarized in subparagraph 131B(3).

(3) *Operator's Written Report.* Upon receipt of the operator's written report, the inspector should ensure that the written report contains the following:

- A specific list of the FAR violated
- A description of the apparent violation (to include the duration of time it remained undetected as well as how and when it was detected)
- A description of the immediate action taken to terminate the conduct that resulted in the apparent violation (to include when the action was taken and who was responsible for taking the action)
- An explanation that contains verification that the violation was inadvertent

- An analysis of the seriousness of the apparent violation and how the operator made the analysis (evidence shall be attached)
- A detailed description of the proposed comprehensive fix (to include the planned corrective steps (such as organization, procedures, manuals, and facilities), the responsibilities for implementing those corrective steps, and a time schedule for completion of the fix)
- Identification of the company official responsible for monitoring the implementation and completion of the comprehensive fix

(4) *Review of Comprehensive Fix.* The inspector shall work with the operator to review the comprehensive fix to ensure that it will prevent a recurrence of the violation.

(a) *Complete Fix.* When the proposed fix is found to be acceptable, the principal inspector shall prepare a letter of correction that includes the date when the fix will be implemented and the date when the fix will be completed.

(b) *Incomplete Fix.* If the proposed comprehensive fix cannot be fully developed within 10 calendar days, the operator should provide at least an overview of its plan. In any event, the operator shall provide a detailed description of the comprehensive fix to the principal inspector within 30 calendar days after the operator's initial notification of the apparent violation.

(5) *Implementation of the Comprehensive Fix.*

During the implementation period, the principal inspector and the operator should continue to work together. The principal inspector has the latitude to advise and assist the operator in correcting any identified problems. Changes can be made to the comprehensive fix when a need is identified. When a change to a comprehensive fix has been agreed upon, the principal inspector shall prepare an amended letter of correction that reflects the change and that contains a plan for monitoring the implementation of the corrective steps. If, at any time, the principal or delegated inspector determines that the actual corrective steps accomplished are contrary to those documented in the comprehensive fix, the principal inspector may rescind the letter of correction, reopen the investigative report, and initiate appropriate legal enforcement action.

(6) *Completion.* At the conclusion of the implementation period, the principal inspector shall make a final assessment. If all elements of the com-

prehensive fix have been adequately accomplished, the principal inspector shall prepare a letter confirming that the comprehensive fix was satisfactorily implemented and completed. This letter shall be sent to the operator and used to close the investigation package.

(7) *Informal Appeal Process.* When disagreements occur regarding either the acceptance of a proposed comprehensive fix or changes to a comprehensive fix prior to its classification as satisfactory, the principal inspector and the operator may request that the issue be resolved at the next level of management within the FAA. This procedure provides for an independent assessment of the areas in disagreement.

(8) *Closing the Case.* The principal inspector has the authority to close the case; however, it may be appropriate for the inspector to consult other inspectors, regional specialists, or the Assistant Chief Counsel on when the case should be closed. After the letter of correction has been issued, the case is closed but will remain subject to a reopening in the event that the agreed upon actions covered in the comprehensive fix have not been completed to the satisfaction of the FAA.

(9) *Subsequent Violations.* If the same or similar violations are discovered subsequent to the FAA's completion of an investigation package, the FAA will not reopen the case unless it is determined that the operator failed to comply with all elements of the comprehensive fix. Additionally, if an operator decides to make further changes to programs or systems identified in a comprehensive fix once it becomes classified as satisfactory, the additional changes do not have to receive separate FAA approval under the terms of this disclosure policy.

(10) *Separate Actions Against Airmen or Other Employees.* The voluntary disclosure policy applies to individual certificated airmen or other employees of an operator when the operator makes a disclosure and is the focal point of a case, and the following conditions are met:

(a) The apparent violation occurred while the employee was acting on behalf of an operator involved in FAR Part 121 or 135 operations.

(b) The employee has immediately made the first report of the apparent violation to the employing operator.

(c) The employing operator must notify the FAA of the apparent violation immediately after the employee has reported it to the operator.

NOTE: If all the preceding conditions are not met, the principal inspector shall review all

facts associated with the case and determine what action is appropriate.

B. Entry and Disposition of Self-Disclosure Cases into the Flight Standards Enforcement Information Subsystem. The FAA modified the Enforcement Information Subsystem (EIS), effective October 1, 1992, to safeguard self-disclosure information and compile statistical data. All references to the identities of the certificate holder, the reporting Flight Standards region, and the district office have been eliminated. Special Self-Disclosure Enforcement Investigation Report (EIR) numbers have been assigned to ensure anonymity. All self-disclosure EIR numbers are now issued by the Flight Standards National Field Office, AFS-500. The numbers will be like those used before, except that region and Flight Standards District Office (FSDO) designations will be replaced with "SD" for Self Disclosure and "00" for Flight Standards. The result is "93SD00XXXX." To open a self-disclosure case number, inspectors should call AFS-500 at (703) 661-0333, extension 5018, 7:30 a.m. through 4:30 p.m., eastern standard time. When entering information into the EIS, inspectors shall adhere to the following instructions:

(1) *Type of Operator.* On the computer-generated FAA Form 2150.5A, "Enforcement Investigative Report," inspectors shall identify the type of operator by one of the two-digit codes below:

- 00 - Scheduled air carrier 121
- 01 - Scheduled cargo carrier 121
- 02 - Scheduled air carrier 135
- 03 - Scheduled cargo carrier 135
- 04 - On-demand air carrier 135
- 06 - Domestic repair station 145
- 07 - Foreign repair station 145
- 13 - Airman
- 14 - Supplemental air carrier 121

NOTE: The source code will be filled automatically, and several other fields will be blanked automatically. The case will close automatically when the district office enters a date in block 27.

(2) *Blank Data Fields.* The following data fields on FAA Form 2150.5A will be blank in self-disclosure cases:

- Designator
- Address
- Telephone Number

- Date of Birth
- Sex
- FAA Certificate Number
- Aviation Employer
- Identification Number
- Aircraft Serial Number
- Owner Name
- Owner Address
- Region of Discovery
- Location
- Airport Identification
- Investigating Office
- Reporting Inspector
- Region/Field office

(3) *The Chief's (Manager's Name, as Appropriate) Name Block.* Type the appropriate name or enter X's in this block because the form will not print when no characters are entered; however, the computer will not store the typed name once the form is saved to the data base. The form should be signed by the approving official.

(4) *New Data Fields.* Four new data fields have also been added:

- SD FAA DATE: (YY/MM/DD): Date the FAA accepted the comprehensive fix offered by the operator
- SD PROBLEM CODE: Three-character numeric code (Use codes from the Program Tracking and Reporting Subsystem (PTRS) comment key word listings. This minimizes confusion and precludes the need for another set of codes.)
- SD PROBLEM DESCRIPTION: Brief description of problem (30 characters maximum)
- CORRECTIVE ACTION PLAN: Summary of long-term corrective steps with enough detail to show who, when, and how the problem will be solved (However, DO NOT include information that could identify a specific individual or certificate holder (1,200 characters maximum).)

(5) *Self Disclosure Denied.* A new source code "38 - SELF DISC - DENIAL," has been added to the EIS. This code is used in situations where the carrier reports an apparent violation, but the principal

inspector determines that the reported violation does not qualify for a self disclosure and recommends a civil penalty or certificate action. In this case, if a self-disclosure number has already been assigned, inspectors should close the self-disclosure EIR as follows:

(a) Open a local EIR number and proceed using normal enforcement procedures.

(b) Use code 38 in the source block.

(c) Close out the self-disclosure EIR number and describe the reason for the denial in the self-disclosure EIR attachment.

(d) Reference the related EIR number in each report.

(6) *Protecting the Identity of Violators Prior to Fiscal Year 1993.* AFS-620 modified 623 of the total 789 closed cases to insert a generic self-disclosure identification (SD ID) code and blanked out any related identifying fields. The remaining cases have discrepancies in the data fields. In order to correct the data, AFS-620 developed an ad hoc report that is available to the FSDO. Inspectors should refer to EISUSERS.BB message of October 16, 1992, to obtain instructions on how to complete the report, or call AFS-540 at (703) 661-0333; or AFS-620 at (405) 954-6419.

(7) *Self Disclosure Packages.* Copies of closed self-disclosure EIR's should be sent to AFS-500. A complete investigative package for this purpose must include the following:

- Section A, FAA Form 2150-5A, generated from the computer
- Section B, Inspector's Summary and Analysis
- The FAA's written response to the certificate holder acknowledging initial notification
- The certificate holder's written report
- A copy of the letter of correction

133. DEVIATIONS RESULTING FROM EMERGENCIES. FAR §§ 135.19(c), 121.557(c), and 121.559(c) require that notification be sent to the FAA Administrator concerning any deviation an operator has made from the FAR as a result of an emergency. Each report of an emergency deviation from the FAR that involves an air carrier shall be investigated to determine if corrective action is necessary. A shared responsibility exists between Flight Standards Service and operators. Operators and crewmembers shall not be permitted to use the emergency

provisions of the FAR as an excuse for failing to comply with a regulation. On the other hand, inspectors must be cautious and ensure that an atmosphere does not develop in which a crewmember would hesitate to declare an emergency for fear of being unfairly criticized after the aircraft is safely on the ground. The investigation should include a determination as to whether the operator and crew were in compliance with such items as operations specifications, company procedures, and checklists. If a determination is made that the operator and crew performed properly, an enforcement action should not be initiated as a result of the deviation. If the emergency was caused by the operator's or airman's incompetence or disregard for a specific FAR, the inspector should follow the guidance provided in FAA Order 2150.3A.

135. VIOLATIONS THAT INVOLVE MULTIPLE CREWMEMBERS. If crewmembers are charged as a result of violations involving operations of aircraft requiring multiple crewmembers, inspectors should ensure that the proper crewmember is charged. The operator's manuals should be reviewed to determine the specific duties and responsibilities of individual crewmembers. If the operator's manuals are ambiguous, the inspector should ensure that the operator's manuals are changed. By referring to the wording of an FAR, the investigating inspector may be able to identify a particular crewmember as being culpable. The inspector shall open separate investigation files for each crewmember suspected of being in violation of the FAR.

137. SYSTEM-WIDE VIOLATIONS. System-wide violations involve multiple occurrences of the same violation by one or more operators. Inspectors should be aware that if multiple violations of the same regulation are occurring either by the same operator or by more than one operator, a misunderstanding of the regulation may be the cause rather than a deficiency in the operator's system. If an inspector's investigation reveals that noncompliance involves more than one operator and that it is due to a misunderstanding of the FAR, the inspector should provide the operators with the correct interpretation of the rule. After providing the correct interpretation of the rule, the inspector should advise the operators in writing that any continued non-compliance may result in enforcement action. Inspectors may identify a violation as being system-wide if the violation is characterized as having either of the following:

- Repetitive acts of noncompliance by the operator
- A single act, error, or omission which, in the inspector's opinion, may indicate widespread noncompliance with the FAR or operator procedures (Such occurrences may be brought to the

inspector's attention during the initial investigation.)

138. COMPLIANCE WITH SMOKING REGULATIONS FOR IN-FLIGHT OPERATIONS.

Principal operations inspectors (POI) shall ensure that U.S. and foreign air carriers to which they are assigned are aware of the public laws and the FAR banning smoking, and that their U.S. air carriers have taken appropriate actions to include procedures in their manuals and training curriculums for instructing all crewmembers regarding these requirements. The FAA position regarding enforcement of the smoking prohibitions contained in FAR §§ 121.317, 129.29, and 135.127 is to treat a reported violation as the FAA would any other safety rule, while at the same time exercising good judgment in determining the appropriate actions to be taken. The actions to be taken will differ according to the type of passenger noncompliance. Passenger noncompliance can be through ignorance of the rule, or unthinking reaction to the urge to smoke, or it can be willful noncompliance. For example, if a passenger lights a cigarette as a reflex action and, when told that smoking is not allowed, puts it out and does not light another one, no further action is necessary. On the other hand, if a passenger lights a cigarette and will not extinguish it when asked to do so, further action is necessary.

A. Guidance. POI's should ensure that operators have procedures in place for instructing crewmembers concerning the following:

(1) Procedures for Handling of Passengers in Noncompliance with Smoking Prohibitions. Operators should instruct flight attendants (F/A) on the following:

- How to use non-threatening methods to approach passengers who are not complying with the smoking rule
- How to avoid actions that could result in abusive passenger behavior
- How to avoid the involvement of other passengers to help obtain compliance from the "smoker," as this could cause passengers to interact in a negative way with each other

(2) Procedures for Handling of Noncompliant Passengers Who Refuse to Identify Themselves. POI's should ensure that their operators have procedures to notify the flightcrew if a passenger is suspected of smoking in the lavatory, of tampering with the lavatory smoke detector, or if a passenger refuses to extinguish a cigarette. The procedures should provide for identification (preferably one with a picture). The procedures should also address instances of a pas-

senger refusing to provide any identification. Crewmembers should obtain as much information as possible regarding that passenger, such as a physical description, seat number, boarding location, and names and addresses of any traveling companions. Operators must obtain the names and addresses of other passengers who are seated in the vicinity of the smoker, as these passengers may have to be contacted as witnesses later. Then, the pilot-in-command (PIC) should notify the operator that there is a noncompliant passenger on board who refuses to identify himself/herself, and request that the operator have law enforcement officials meet the flight at the gate. The law enforcement officials should be informed by the operator's personnel that they believe that a person may have violated a Federal law and the FAR. Regardless of the actions the law enforcement officials may take, it is important that the FAA be given enough information (evidence), including the proper identification of the alleged offender, to initiate an EIR. If the law enforcement officials obtain the identity of the smoker or person who tampers with a lavatory smoke detector, this information should be provided to the F/A in charge of the cabin, or the PIC, or station manager, as applicable. This person will then be responsible for ensuring that the information regarding the smoker's identification is included with the operator's report to the FAA describing the incident.

(3) *Procedures for Handling of Physically Abusive, Noncompliant Passengers.* Carriers should have procedures to address the following situations: if a passenger becomes physically abusive either toward another passenger or crewmember; or if a passenger has to be physically restrained; or if a flight crewmember must leave the flight deck to help restore order in the cabin; then the appropriate information should be obtained and the PIC should notify the operator and have the operator request that the appropriate law enforcement officials meet the flight at the gate.

(4) *Reporting Noncompliance.* All cases of noncompliance with the smoking regulations should be reported in a timely manner by the operator to the FAA in accordance with the procedures contained in the operator's manual (as required by FAR §§ 121.133 and 135.21, as applicable). The exception to this is the case where the person smoking immediately extinguishes the cigarette when asked to do so. The PIC and/or the F/A in charge of the cabin should fill out a report which, if feasible, both of them should sign. This report should be sent to the operator's personnel designated in the operator's and crewmembers' manuals. Some operators have indicated that they will develop a form that will list the information that should be given and include the address to

which the form should be mailed. POI's should encourage operators to adopt this procedure. The report should include the following:

- The name and address of the smoker (if this information has been obtained)
- A physical description of the smoker
- The seat number in which the smoker was seated
- The location of the smoker's boarding and destination
- Names, addresses, and phone numbers of witnesses
- Names, addresses, and domiciles of the other crewmembers
- A statement and confirmation of whether or not the passenger briefing required by FAR 121.571(a)(1)(i) was given, and whether or not the smoker was on board the aircraft when the briefing was given
- A statement and confirmation of whether or not the "no smoking" signs were illuminated or "no smoking" placards were posted
- A brief, objective, narrative of the incident
- The airline, flight number, and date
- Police report number if police were summoned

B. Summary. POI's should inform their operators of the following types of recommended practices for crewmember handling of smoker noncompliance with smoking prohibitions on non-smoking flights:

(1) *Incidents That Require No Action.* No action is required if a person lights a cigarette or other smoking material and, when advised that this is against the law and the FAR, immediately extinguishes it and does not light another cigarette.

(2) *Incidents That Require Obtaining Information.* Crewmembers should be instructed to obtain the report information (see 138A(4)) when one of the following situations occurs:

- A smoker refuses to immediately extinguish smoking materials
- A smoker or lavatory smoke detector "tamperer" becomes abusive
- The crew has evidence that a person has smoked in the lavatory

- The crew has evidence that a person has tampered with the lavatory smoke detector

(3) *Incidents That May Require Involvement of Law Enforcement Officials.* Crewmembers should request that police meet the flight at the gate when the flight arrives and obtain information when the following occurs:

- A smoker refuses to produce identification
- A person who is suspected of tampering with a lavatory smoke detector refuses to produce identification
- A person suspected of smoking in a lavatory refuses to produce identification
- A smoker or lavatory smoke detector tamperer becomes abusive toward crewmembers or other passengers

C. Procedures. Air carriers and passengers must comply with the regulations discussed in this paragraph, as well as with all other appropriate FAA safety regulations. Noncompliance with FAA safety regulations by either a passenger or an air carrier should result in an enforcement action being taken in accordance with FAA Order 2150.3A. With respect to passenger noncompliance with smoking prohibitions, the following information regarding enforcement action should be noted:

(1) *Interference with a Crewmember.* Passenger noncompliance with FAA safety regulations may result in interference with a crewmember, which is a violation of FAR § 91.11 and may also be a criminal violation under § 46504 of Title 49, U.S.C. Operators should have procedures in their manuals to ensure that crewmembers know what actions to take if a passenger interferes with a crewmember and/or does not comply with the smoking regulations. If the passenger interferes with a crewmember, the operator should involve local law enforcement officials. If passenger noncompliance does not result in crewmember interference, but the operator files a complaint with the FAA, the operator must provide enough information (evidence) to the FAA to ensure that an EIR can be initiated.

(2) *Providing Evidence.* Operators or other complainants must provide ample evidence, and FAA inspectors must ensure that ample evidence exists, to make the following determinations: whether a violation of the FAR has occurred; whether there is enough information to locate the passenger (his/her name and address); and whether statements from crewmembers and company officials will be required to corroborate the complaint. If an operator cannot provide the fore-

going information, then no further action should be taken.

(3) *Complaints.* Complaints from other passengers should also contain enough information (including that previously described) so that it can be used to initiate an investigation.

(4) *Circumstantial Evidence.* Recently, some concerns have been expressed about enforcement actions being taken against passengers for noncompliance with the smoking regulations when the information provided by the operator and/or crewmember contains evidence that is only circumstantial in nature. Circumstantial evidence (as opposed to direct evidence) is indirect evidence. For example, if a crewmember does not observe a passenger smoking in a lavatory, but does observe that passenger leaving a lavatory with a package of cigarettes in his/her possession, does smell cigarette smoke while the person is in the lavatory or immediately after the person leaves the lavatory, and also observes ashes in the lavatory (although the crewmember may not have directly observed the passenger smoking in the lavatory), there is enough indirect (circumstantial) evidence to prove that the passenger was smoking. One legal encyclopedia ("Guide to American Law," West Publishing Company) describes circumstantial evidence as the following:

Information and testimony presented by a party in a civil or criminal action that permit the making of deductions that indirectly establish the existence or nonexistence of the fact or event that the party seeks to prove.

A party or witness who provides circumstantial evidence does not have actual personal knowledge of, and did not directly observe, the fact in issue, but because of the facts he or she knows or observed, he or she, and any other reasonable person, can logically deduce the existence of fact or event.

(5) *Paragraph 405, "Evidence of Violations," in FAA Order 2150.3A.* This paragraph does not, at the present time, explicitly discuss the use of circumstantial evidence in enforcement actions. The FAA Headquarters legal staff, however, has advised that circumstantial evidence may be used in many instances, including enforcement actions involving noncompliance with the smoking regulations, if an operator, crewmember, or passenger provides to the FAA the information contained in this paragraph.

139. POI NOTIFICATION AND ACTION. When an inspector initiates a violation investigation, the inspector should immediately notify the POI of the impending action. This will allow the POI to determine the extent of the problem and to ensure that

the operator takes corrective action. Additional coordination between the inspector and the POI may be necessary to determine who handles the enforce-

ment action, in accordance with the guidance in FAA Order 2150.3A.

140. RESERVED.

[PAGES 1-109 AND 1-110 RESERVED]